

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

----

In re L.N., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

L.N.,

Defendant and Appellant.

C043888

(Super. Ct. No.  
J59435)

Following a contested jurisdictional hearing,<sup>1</sup> the juvenile court sustained charges against L.N., a minor, of possession of a controlled substance for sale (Health & Saf. Code, § 11378 -- count 1), possession of a firearm by a minor (Pen. Code,

---

<sup>1</sup> By stipulation, the matter was submitted on the preliminary hearing transcript Hung Le and My Pham, who were charged in adult court based in part on the same contraband underlying the charges against the minor.

§ 12101, subd. (a)(1) -- count 3), and possession of ammunition by a minor (Pen. Code, § 12101, subd. (b)(1) -- count 4).<sup>2</sup>

Placed on probation, the minor appeals contending the evidence is insufficient to support the sustaining of all three counts. The People agree the evidence is insufficient to support the finding the minor possessed ammunition, but disagree as to the remaining counts.

#### FACTS

On June 8, 2002, about 3:00 a.m., Stockton Police Officers Anthony Desimone and James Bellew were looking for a suspect in a recent auto burglary when they drove by the open garage of a residence near the burglarized vehicle. There were three males in the garage, one of whom ran into the residence while the other two hid behind a van in the garage. A Honda Prelude and another vehicle were parked in the residence's driveway.

The officers detained Surigha Chanthakone and Tuan N., the two individuals who attempted to hide. Do N. came out of the residence and said Tuan was her son. Do told the officers she did not know who owned the Prelude nor was she aware that anyone had run into the house. Chanthakone and Tuan denied knowing who owned the Prelude.

Because the Prelude was blocking Do's driveway, she asked Desimone to have it moved. Desimone offered to have the Prelude

---

<sup>2</sup> Count 2 -- possession of cocaine for sale while armed with a loaded firearm (Health & Saf. Code, § 11370.1) -- was not sustained.

towed and Bellew conducted an inventory search of the car, which disclosed a digital scale and a metal case containing ecstasy, methamphetamine, and marijuana.

Concerned a stranger might be in her house, Do asked the officers to look inside. In a back bedroom Desimone found Hung Le, whom Do said was her daughter's boyfriend, and a young boy. Le looked like the person who had run into the house and had the keys to the Prelude on him. Le admitted he had driven the car to Do's residence. Le was arrested and searched; he had \$1,040 on him.

Desimone, Bellew and a narcotics officer went to Le's home and conducted a consensual search. They found more ecstasy, a large amount of money, and a magazine for a 10-millimeter pistol. However, unable to find a gun for the magazine, the officers returned to the minor's residence to see if Le had left it there.

The officers searched the bedroom in which Le was found, discovering more ecstasy but no gun. There were two or three other bedrooms in the house, and the officers entered one that Do said was the minor's. The minor was lying on the bed and My Pham, an adult male, was lying on a mattress on the floor. The minor consented to having the room searched.

A shoebox with a closed lid and a backpack were in a closet. The backpack contained a bulletproof vest and a .45 caliber handgun. The shoebox contained about 100 ecstasy pills and a letter addressed to Pham. Pham admitted the shoe box was his, but denied knowledge of the ecstasy. The minor denied

knowing the backpack contained the vest or the gun and claimed the backpack belonged to his younger brother. During the search, Officer Bellew saw "kids everywhere," ranging in age from 2 or 3 to 14 or 15. Do testified she had eight children.

## DISCUSSION

The minor contends the evidence is insufficient to sustain the findings of possession of a controlled substance for purpose of sale (count 1), possession of a firearm (count 3), and possession of ammunition (count 4). We agree.

"When the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence whether it contains substantial evidence -- i.e., evidence that is credible and of solid value -- from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt." (*People v. Green* (1980) 27 Cal.3d 1, 55; *In re Frederick G.* (1979) 96 Cal.App.3d 353, 362-365.)

### *Count 1 (possession of the ecstasy)*

"The essential elements of the offense of unlawful possession of a controlled substance are actual or constructive possession . . . with knowledge of its presence and its nature as a controlled substance. The elements may be proven by circumstantial evidence. [Citations.] [¶] Actual or constructive possession is the right to exercise dominion and control over the contraband or the right to exercise dominion and control over the place where it is found. [Citation.] Exclusive possession is not necessary." (*People v. Rushing* (1989) 209 Cal.App.3d 618, 621-622, cited with approval in *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242.)

Specifically, the minor challenges the adequacy of the proof that he knew of the presence of the ecstasy. *People v.*

*Monson* (1967) 255 Cal.App.2d 689, presents circumstances similar to those herein. Monson and her male companion were arrested for robbery in an apartment. The apartment was searched and, in addition to finding additional evidence of the robbery, heroin was found in a hall closet and marijuana was found in a bedroom closet. The closet contained both male and female clothing. Monson admitted living in the apartment and using heroin, but denied knowledge of the marijuana found in the closet. (*Id.* at pp. 690-691.)

Monson was charged with possession of both the heroin and the marijuana. The superior court dismissed the case after granting Monson's Penal Code section 995 motion and the People appealed. (*People v. Monson, supra*, 255 Cal.App.2d at p. 690.) The appellate court reversed the dismissal of the heroin charge but affirmed the dismissal of the marijuana count, stating: "There is nothing in [Monson's] statement which connects her with the marijuana in the bedroom closet. The question is whether it can be inferred that she was in constructive possession and knew of the narcotic nature of the substance from the fact that she evidently lived in the apartment and that the closet contained female garments." (*Id.* at p. 692.) The court went on to note, "In the procedural posture of this case [Monson] should be required to stand trial on the marijuana count 'if there is some rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it.'" (*Id.* at p. 693.) Unable to come up with any

rational ground, the court affirmed the dismissal of the marijuana count.

Here, it is undisputed that it was the minor's room in which the shoebox containing the ecstasy was found and that the minor clearly had access to the items in the closet. However, the evidence strongly suggests the minor was not the exclusive occupant of the bedroom. While the minor was using the bed, Pham was using a mattress on the bedroom floor, implying that he too used the bedroom. This implication is further reinforced by Pham's use of the closet to store his shoebox and personal papers. Although the house was clearly being used by at least Le and Pham in their drug dealing, nothing in the statements by the minor or in his conduct connected him with the drugs. Moreover, even if the minor did know of the drug dealing, the evidence is insufficient to show he had any right to control Pham's shoebox. Consequently, the evidence is insufficient to support the sustaining of count 1.

*Count 3 (possession of the backpack)*

Possession of a firearm requires knowledge of its presence. (*People v. Snyder* (1982) 32 Cal.3d 590, 592; *People v. Jeffers* (1996) 41 Cal.App.4th 917, 922.) As shown above, the minor's access to the closet was not exclusive -- Pham also had access to it. No personal effects of either the minor or Pham were in the backpack. Again, like the shoebox, there were no statements nor conduct by the minor showing single or joint constructive possession of the backpack. Indeed, the minor's only statement was a claim that the backpack belonged to his younger brother

and a denial of knowledge of its content. On the other hand, Pham's admission of possession of the shoebox was strong evidence that he was involved with the drug dealing going on in the residence. Given this state of the evidence, no reasonable inference can be drawn that the minor knew of the content of the backpack. Consequently, the evidence is insufficient to support this count.

*Count 4 (possession of ammunition)*

As the minor points out, and the People so acknowledge, there was no evidence the gun in the backpack was loaded. The only evidence regarding ammunition related to the 10-millimeter magazine found during the search of Le's residence, which obviously will not support the sustaining of count 4.

DISPOSITION

The juvenile court's sustaining of counts 1, 3, and 4 is reversed for insufficiency of the evidence. The matter is remanded to the juvenile court with directions to dismiss the petition against the minor.

\_\_\_\_\_  
NICHOLSON, Acting P.J.

We concur:

\_\_\_\_\_  
RAYE, J.

\_\_\_\_\_  
HULL, J.